

Resolution No. 16-486  
Introduced: March 18, 2008  
Adopted: March 18, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

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By: County Council

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**SUBJECT:** APPLICATION NO. G-866 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,  
Todd D. Brown, Esquire, Attorney for Applicant National Labor College, OPINION AND  
RESOLUTION ON APPLICATION  
Tax Account No. 03381871

**OPINION**

Application No. G-866, filed on June 21, 2007 by Applicant National Labor College (the "College"), requests reclassification from the R-90 Zone to the O-M Zone of one acre of land located at 10000 New Hampshire Avenue, at the southwest corner of the intersection of Powder Mill Road and New Hampshire Avenue in Silver Spring, on property identified as a portion of Parcel A of the George Meany Center for Labor Studies Plat (P.B. 22279), in the 5th Election District. The application was submitted under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, development standards and staging. Such limitations are shown on a Schematic Development Plan that is submitted with the application, and must be repeated in covenants to be filed in the county land records.

The Hearing Examiner recommended approval of the application on the basis that the O-M Zone at the proposed location would satisfy the requirements of the purpose clause; that the proposed reclassification and development would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Montgomery County Planning Board ("Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with the Hearing Examiner's conclusions and incorporates herein the Hearing Examiner's Report and Recommendation dated February 27, 2008.

The subject property is located at the southwest corner of New Hampshire Avenue and Powder Mill Road, in an R-90 Zone, a few blocks from the Prince George's County Line. It has approximately 115 feet of frontage along New Hampshire Avenue to the east, and 275 feet of frontage along Powder Mill Road to the north, which is, at this location, a stub road ending in a cul de sac at the western edge of the subject property. The site is currently vacant, except for a sidewalk that traverses the property diagonally and an access drive from Powder Mill Road to the adjacent Holly Hall Apartments, which is governed by an easement. The property is gently sloped and clear of vegetation, except for grass and a single tree that is in poor health. It contains no wetlands, floodplains, rare or endangered species or critical habitats.

The surrounding area for this application has been designated as the area generally bound by I-495 to the south, the R-90 residential area along New Hampshire to the north and northeast, the boundary of the National Labor College campus to the west and northwest, and the eastern edge of the Hillandale Shopping Center property to the east. The surrounding area contains a mix of commercial uses, a church, a multi-family apartment building and the National Labor College. Abutting the subject site to the west is the remainder of the 47-acre College property, classified in the R-90 Zone. Abutting to the south is the Holly Hall Apartments, an apartment building for low-income seniors in the R-20 Zone. The subject site confronts property in the C-1 Zone to the north and east, and diagonally to the northeast: a gas station across Powder Mill Road to the north, a church diagonally across the intersection, and the Hillandale Shopping Center across New Hampshire Avenue. The surrounding area also contains an office building and a small retail center at its northern edges, and a property just south of the Hillandale Shopping Center that was recently reclassified to the same zone sought here, the O-M Zone. Beyond the surrounding area to the north and west are single-family homes in the R-90 Zone. East of the Hillandale Shopping Center are a small amount of additional retail and office, a multi-family residential building, and additional single-family homes.

The subject property was classified under the R-90 Zone in the 1958 County-wide comprehensive rezoning. In 1964, the owner of a filling station on the north side of the stub end of

Powder Mill Road, west of New Hampshire Avenue, sought to expand the station using the subject property. Rezoning application E-86 was granted to facilitate the expansion, rezoning the subject property to the C-1 Zone. A master plan was later adopted recommending C-1 zoning for part of the subject property. In 1974, the filling station arranged a land swap with the owners of the College property, allowing the gas station to expand to the west rather than onto the subject site. This was carried out with the help of two additional rezonings, one reclassifying land behind the filling station to the C-1 Zone and another reclassifying the subject site back to the R-90 Zone. The justification given for the latter was that the property was surrounded by R-90 zoning on three sides. As Mr. Perrine pointed out, however, none of the adjacent R-90 property could be used for single-family housing; it consisted of the College, New Hampshire Avenue right-of-way and a narrow strip to the south. Subsequent master plans carried forward the R-90 zoning classification in their recommendations.

The Applicant has a contract to sell the subject site to Chevy Chase Bank, if the rezoning is approved, for the construction of a bank branch with drive-through windows. Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan that specifies which elements of the plan are illustrative and which are binding, i.e. elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements shown on the SDP limit the use of the site to a bank branch with a maximum of 3,650 square feet, drive-up ATMs and teller service, associated signage, parking, landscaping, lighting and infrastructure improvements. They also specify that the building will be no

more than one story or 25 feet in height, will have a floor area ratio no greater than 0.5 and will be built in a single phase.

The SDP shows primary vehicular access from the existing roadway that extends from Powder Mill Drive to the Holly Hall Apartments. Access would also be available via the existing driveway along the site's southern border, which leads from the Holly Hall Apartments to a right-in/right-out access on New Hampshire Avenue. Pedestrian access is shown via new sidewalks and lead-in walkways.

As shown on page 14 of the Hearing Examiner's Report and Recommendation, the proposed development would be consistent with applicable development standards for the O-M Zone and applicable parking requirements.

The District Council turns next to the purpose clause of the O-M Zone, and concludes that the proposed rezoning would satisfy its provisions. The purpose of the O-M Zone as stated in Code §59-C-4.31 is set forth below.

**59-C-4.310. Purpose.**

It is the purpose of the O-M zone to provide locations for moderate-intensity office buildings in areas outside of central business districts. It is intended that the O-M zone be located in areas where high-intensity uses are not appropriate, but where moderate intensity office buildings will not have an adverse impact on the adjoining neighborhood. This zone is not intended for use in areas which are predominantly one-family residential in character.

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application.

The subject site is outside a central business district, in a mixed-use area that is not predominantly one-family residential in character. The surrounding area has a mix of commercial, institutional and multi-family uses, and the subject property is adjacent to or confronts each of these use types – a multi-family building, a large institutional use, a gas station and a shopping center. The subject site is in a small commercial area where the proximity of residential neighborhoods would make high-intensity uses inappropriate. The District Council finds that the proposed rezoning and development would not adversely impact the adjoining neighborhood. The proposed bank branch would be a

moderate-intensity use in keeping with the character of the surrounding commercial center. At this location, adjacent to New Hampshire Avenue and I-495 and surrounded by commercial and institutional uses, the activity level at the proposed bank would be very unlikely to have an adverse effect on the Holly Hall Apartments. Moreover, the proposed building would be much smaller than the Holly Hall building and other buildings nearby, and therefore would not be obtrusive. The Zoning Ordinance requires screening of parking lots, and landscaping will be designed in detail at a later stage, if the zoning is approved. Moreover, the traffic study established that the proposed project would not adversely affect local traffic conditions.

The traffic study established that the proposed project would not adversely affect local traffic conditions. Both of the intersections examined in the traffic study currently operate with critical lane volumes ("CLVs") below the applicable 1,500-CLV congestion standard for the Fairland/White Oak Policy area, and would continue to do so with the additional of background traffic (from development that is approved but not yet built) and the proposed development.

Accordingly, the District Council concludes that based on the preponderance of the evidence, the Applicant has demonstrated that its proposal would not have an adverse impact on the adjoining neighborhood. For all of these reasons, the District Council concludes that the proposed rezoning and development would be consistent with the purpose clause for the O-M Zone.

An application for a floating zone reclassification must be evaluated for compatibility with existing and planned uses in the surrounding area. For the reasons stated with regard to the purpose clause, the District Council concludes that the proposed rezoning and development would be compatible with existing and planned uses in the surrounding area. A small bank building at this location would blend in well with the mixed character of the surrounding area and, with the limitations on size and activity established in the binding elements of the SDP, would be compatible with the adjacent Holly Hall Apartments, the only residential use that would not be buffered by substantial distances and intervening development. As Technical Staff noted, higher-density residential uses are often located near lower-intensity commercial uses. See Ex. 35. The view from the Holly Hall Apartments in the direction of the

subject site is already dominated by roadways and commercial uses, so exchanging a bare piece of grass in the forefront of that view for a small building and parking with surrounding landscaping is unlikely to have a negative effect. Traffic impacts would be minor, resulting in no appreciable adverse impact, and pedestrian connections would be improved by the planned sidewalks and walkways. For all of these reasons, the Hearing Examiner concludes that the proposed development would be compatible with Holly Hall. The evidence amply demonstrates that the proposed development would be compatible with the remaining surrounding uses, which are of similar or greater scale and intensity.

The District Council further determines that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The District Council agrees with the findings made by the Hearing Examiner, the Planning Board and Technical Staff that the proposed development would comply with the Master Plan. Although the Master Plan recommended continued R-90 zoning for the subject site, it included the site in the Hillandale Commercial Center, suggesting that commercial use of the site would be consistent with the Master Plan's recommendations.

The evidence indicates that the proposed rezoning and development would be adequately supported by and would have no adverse effect on local roadways or public utilities.

Both Technical Staff and the Applicant's land planner opined that the subject site would be put to a higher use under the O-M Zone than under its current zoning. The current R-90 classification would permit the construction of about four single-family homes on the site, but the site is not attractive for single-family use, surrounded as it is by busy roadways, commercial and institutional uses and a multi-family apartment building. This supports a conclusion that the requested rezoning would serve the public interest by allowing a property that currently has neither function nor natural beauty to be put to productive use.

Accordingly, the District Council concludes, based on the preponderance of the evidence, that the proposed reclassification bears sufficient relationship to the public interest to warrant its approval.

For these reasons and because to grant the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

### **ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-866, seeking reclassification from the R-90 Zone to the O-M Zone of 1.03 acres of land located at 10000 New Hampshire Avenue, Silver Spring, Maryland, in the 5th Election District, is hereby approved in the amount requested, subject to the specifications and requirements of the approved schematic development plan, Exhibit 30(c); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved schematic development plan, in accordance with §59-D-1.64, and provided that the Declaration of Covenants is filed in the county land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council